



KUSHNIRSKY GERBER PLLC
27 UNION SQUARE WEST, SUITE 301
NEW YORK, NY 10003
kgfirm.com

O: (212) 882-1320
F: (917) 398-1487

Andrew Gerber, Member
andrew@kgfirm.com

February 9, 2024

Via ECF

The Honorable Jennifer L. Rochon
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: Letter Motion to File Documents Under Seal - *Momentum Funding, LLC v. Nova Funding Corporation, et al.*, Case No. 23-cv-9392

Dear Judge Rochon,

We represent Plaintiff Momentum Funding, LLC (“Plaintiff”) in the above-titled action. In accordance with Section 4(B)(ii) and 4(B)(iii)(b) of Your Honor’s Individual Rules of Practice, Plaintiff requests permission to file redacted copies of Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion for Default Judgment, the Affirmation of Andrew Gerber, Esq in Support of Plaintiff’s Motion for Default Judgment, and the Affirmation of Ryan Melcher, Esq. in Support of Plaintiff’s Motion for Default Judgment and to file unredacted copies of these documents under seal.

The information redacted in these documents discloses Plaintiff’s average annual and monthly revenue from 2015 to 2022, which is sensitive business information that courts routinely allow parties to file under seal due to the risk of competitive harm that would occur as a result of public disclosure. *See e.g., Haley v. Teachers Ins. & Annuity Asssoc. of Am.*, 2020 WL 3618573, at *1 (S.D.N.Y. July 2, 2020) (“The specific dollar figure that [the defendant] seeks to file under seal is the type of information reflecting a company’s revenues that is treated as confidential for competitive harm reasons.”); *Playtex Prod., LLC v. Munchkin, Inc.*, 2016 WL 1276450, at *11 (S.D.N.Y. Mar. 29, 2016) (granting the plaintiffs’ motion to seal statements related to their sales and revenue, noting that the plaintiffs “would be competitively harmed if they were revealed.”).

Additionally, the limited nature of the redactions Plaintiff seeks to make weighs in favor of granting Plaintiff’s request. *See Haley*, 2020 WL 3618573, at *1. Accordingly, the Court should find that Plaintiff’s privacy interests and “the likely harm [it] may suffer if this ‘highly proprietary material’ is revealed to [its] competitors outweigh the presumption of public access[.]” *Playtex Prod., LLC*, 2016 WL 1276450, at *11.

Respectfully submitted,




Andrew Gerber
KUSHNIRSKY GERBER PLLC
27 Union Square West, Suite 301
New York, New York 10003
(212) 882-1320

*Attorneys for Plaintiff Momentum
Funding, LLC*

Because the proposed redactions are limited and the redacted information played little to no role in the Court's decision on Plaintiff's default-judgment motion, the Court GRANTS Plaintiff's motion to file redacted copies of certain documents. *See Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016) ("Where a document's role in the performance of Article III duties is negligible, the weight of the presumption [of public access] is low." (ellipsis, quotation marks, and citation omitted)). The Court does not decide at this time whether the redacted information should be redacted in future filings. *See id.* ("Conversely, where documents directly affect an adjudication or are used to determine litigants' substantive legal rights, the presumption of access is at its zenith, and thus can be overcome only by extraordinary circumstances." (quotation marks and citations omitted)).

SO ORDERED.

Dated: March 1, 2024
New York, New York


JENNIFER L. ROCHON
United States District Judge